



General Assembly

February Session, 2006

Raised Bill No. 665

LCO No. 3175

03175_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING EMINENT DOMAIN PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 8-193 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage and*
3 *applicable to property acquired on or after said date*):

4 (a) After approval of the development plan as provided in this
5 chapter, the development agency may proceed by purchase, lease,
6 exchange or gift with the acquisition or rental of real property within
7 the project area and real property and interests therein for rights-of-
8 way and other easements to and from the project area.

9 (b) The development agency may, with the approval of the
10 legislative body, and in the name of the municipality, acquire by
11 eminent domain real property located within the project area and real
12 property and interests therein for rights-of-way and other easements to
13 and from the project area, in accordance with subsection (e) of this
14 section and in the same manner that a redevelopment agency may
15 acquire real property under sections 8-128 to 8-133, inclusive, as if said
16 sections specifically applied to development agencies, except that no

17 real property may be acquired by eminent domain pursuant to this
18 section for the sole purpose of increasing local tax revenue. The
19 legislative body shall not approve the use of eminent domain by the
20 development agency unless the legislative body has (1) considered the
21 benefits to the public and any private entity that will result from the
22 development project and determined that the public benefits outweigh
23 any private benefits, (2) determined that the current use of the
24 property cannot be feasibly integrated into the overall development
25 plan, and (3) determined that the acquisition of the real property by
26 eminent domain is reasonably necessary to successfully achieve the
27 objectives of the development plan.

28 (c) The development agency may, with the approval of the
29 legislative body and, of the commissioner if any grants were made by
30 the state under section 8-190 or 8-195 for such development project,
31 and in the name of such municipality, transfer by sale or lease at fair
32 market value or fair rental value, as the case may be, the whole or any
33 part of the real property in the project area to any person, in
34 accordance with the project plan and such disposition plans as may
35 have been determined by the commissioner.

36 [(b)] (d) A development agency shall have all the powers necessary
37 or convenient to undertake and carry out development plans and
38 development projects, including the power to clear, demolish, repair,
39 rehabilitate, operate, or insure real property while it is in its
40 possession, to make site improvements essential to the preparation of
41 land for its use in accordance with the development plan, to install,
42 construct or reconstruct streets, utilities and other improvements
43 necessary for carrying out the objectives of the development project,
44 and, in distressed municipalities, as defined in section 32-9p, to lend
45 funds to businesses and industries in a manner approved by the
46 commissioner.

47 (e) (1) On and after the effective date of this section, on the date a
48 certificate of taking is issued pursuant to section 8-129, as amended by

49 this act, for property acquired by eminent domain pursuant to this
50 section, the development agency shall record separate findings that
51 itemize the value of the real property and any structures or
52 improvements on the real property so acquired.

53 (2) If real property acquired on or after the effective date of this
54 section is not used for the purpose for which it was acquired or for
55 some other public use and is subsequently offered for sale, the
56 property shall be first offered for sale to the person from whom the
57 property was acquired, or the person's known or ascertainable heirs,
58 successors or assigns, if any, for a price not greater than the value
59 documented in the recorded findings, less the value of any structures
60 or improvements removed from the property by the development
61 agency or its designee after the real property was acquired.

62 Sec. 2. (NEW) (*Effective from passage*) (a) No person who negotiates
63 the acquisition or rental of real property may represent in such
64 negotiation that the person has the power to acquire the property by
65 eminent domain unless the person has such power.

66 (b) Any violation of subsection (a) of this section shall be deemed an
67 unfair or deceptive trade practice under subsection (a) of section 42-
68 110b of the general statutes.

69 Sec. 3. Section 8-129 of the general statutes is repealed and the
70 following is substituted in lieu thereof (*Effective from passage and*
71 *applicable to property acquired on or after said date*):

72 (a) The redevelopment agency shall determine the compensation to
73 be paid to the persons entitled thereto for [such] real property [and] to
74 be acquired by eminent domain pursuant to section 8-128. The
75 compensation shall be based on an appraisal by a state certified real
76 estate appraiser and the appraisal shall be conducted in accordance
77 with generally accepted standards of professional appraisal practice as
78 described in the Uniform Standards of Professional Appraisal Practice
79 issued by the Appraisal Standards Board of the Appraisal Foundation

80 pursuant to Title XI of FIRREA and any regulations adopted pursuant
 81 to section 20-504. The redevelopment agency shall file a statement of
 82 compensation, containing a description of the property to be taken and
 83 the names of all persons having a record interest therein and setting
 84 forth the amount of such compensation, and a deposit as provided in
 85 section 8-130, with the clerk of the superior court for the judicial
 86 district in which the property affected is located. The amount of such
 87 compensation for such property shall be not less than one hundred
 88 twenty-five per cent of the fair market value of such property.

89 (b) Upon filing such statement of compensation and deposit, the
 90 redevelopment agency shall forthwith cause to be recorded, in the
 91 office of the town clerk of each town in which the property is located, a
 92 copy of such statement of compensation, such recording to have the
 93 same effect and to be treated the same as the recording of a lis
 94 pendens, and shall forthwith give notice, as provided in this section, to
 95 each person appearing of record as an owner of property affected
 96 thereby and to each person appearing of record as a holder of any
 97 mortgage, lien, assessment or other encumbrance on such property or
 98 interest therein [(a)] (1) in the case of any such person found to be
 99 residing within this state, by causing a copy of such notice, with a copy
 100 of such statement of compensation, to be served upon each such
 101 person by a state marshal, constable or indifferent person, in the
 102 manner set forth in section 52-57, as amended, for the service of civil
 103 process, and [(b)] (2) in the case of any such person who is a
 104 nonresident of this state at the time of the filing of such statement of
 105 compensation and deposit or of any such person whose whereabouts
 106 or existence is unknown, by mailing to each such person a copy of such
 107 notice and of such statement of compensation, by registered or
 108 certified mail, directed to [his] such person's last-known address, and
 109 by publishing such notice and such statement of compensation at least
 110 twice in a newspaper published in the judicial district and having daily
 111 or weekly circulation in the town in which such property is located.
 112 Any such published notice shall state that it is notice to the widow or

113 widower, heirs, representatives and creditors of the person holding
114 such record interest, if such person is dead. If, after a reasonably
115 diligent search, no last-known address can be found for any interested
116 party, an affidavit stating such fact, and reciting the steps taken to
117 locate such address, shall be filed with the clerk of the superior court
118 and accepted in lieu of mailing to the last-known address.

119 (c) Not less than twelve days or more than ninety days after such
120 notice and such statement of compensation have been so served or so
121 mailed and first published, the redevelopment agency shall file with
122 the clerk of the superior court a return of notice setting forth the notice
123 given and, upon receipt of such return of notice, such clerk shall,
124 without any delay or continuance of any kind, issue a certificate of
125 taking setting forth the fact of such taking, a description of all the
126 property so taken and the names of the owners and of all other persons
127 having a record interest therein. The redevelopment agency shall cause
128 such certificate of taking to be recorded in the office of the town clerk
129 of each town in which such property is located. Upon the recording of
130 such certificate, title to such property in fee simple shall vest in the
131 municipality, and the right to just compensation shall vest in the
132 persons entitled thereto. At any time after such certificate of taking has
133 been so recorded, the redevelopment agency may repair, operate or
134 insure such property and enter upon such property, and take any
135 action that is proposed with regard to such property by the project
136 area redevelopment plan.

137 (d) The notice [referred to above] required in subsection (b) of this
138 section shall state that (1) not less than twelve days or more than
139 ninety days after service or mailing and first publication thereof, the
140 redevelopment agency shall file, with the clerk of the superior court for
141 the judicial district in which such property is located, a return setting
142 forth the notice given, (2) upon receipt of such return, such clerk shall
143 issue a certificate for recording in the office of the town clerk of each
144 town in which such property is located, (3) upon the recording of such
145 certificate, title to such property shall vest in the municipality, the right

146 to just compensation shall vest in the persons entitled thereto and the
 147 redevelopment agency may repair, operate or insure such property
 148 and enter upon such property and take any action that may be
 149 proposed with regard thereto by the project area redevelopment plan,
 150 and (4) such notice shall bind the widow or widower, heirs,
 151 representatives and creditors of each person named [therein] in the
 152 notice who then or thereafter may be dead.

153 (e) When any redevelopment agency acting on behalf of any
 154 municipality has acquired or rented real property by purchase, lease,
 155 exchange or gift in accordance with the provisions of this section, or in
 156 exercising its right of eminent domain has filed a statement of
 157 compensation and deposit with the clerk of the superior court and has
 158 caused a certificate of taking to be recorded in the office of the town
 159 clerk of each town in which such property is located as provided in
 160 this section, any judge of such court may, upon application and proof
 161 of such acquisition or rental or such filing and deposit and such
 162 recording, order such clerk to issue an execution commanding a state
 163 marshal to put such municipality and the redevelopment agency, as its
 164 agent, into peaceable possession of the property so acquired, rented or
 165 condemned. The provisions of this [section] subsection shall not be
 166 limited in any way by the provisions of chapter 832.

167 Sec. 4. Section 8-132 of the general statutes is repealed and the
 168 following is substituted in lieu thereof (*Effective from passage*):

169 (a) Any person claiming to be aggrieved by the statement of
 170 compensation filed by the redevelopment agency may, at any time
 171 within six months after the [same] statement of compensation has been
 172 filed, apply to the superior court for the judicial district in which such
 173 property is situated for a review of such statement of compensation so
 174 far as [the same] it affects such applicant. The court, after causing
 175 notice of the pendency of such application to be given to the
 176 redevelopment agency, may, with the consent of the parties or their
 177 attorneys, appoint a judge trial referee to make a review of the

178 statement of compensation. For purposes of such application, review
179 and appeal therefrom, and for purposes of sections 52-192a to 52-195,
180 inclusive, of the 2006 supplement to the general statutes, such
181 applicant shall be deemed a counterclaim plaintiff.

182 (b) If the court appoints a judge trial referee, the judge trial referee,
183 after giving at least ten days' notice to the parties interested of the time
184 and place of hearing, shall hear the applicant and the redevelopment
185 agency, shall view the property and take such testimony as the judge
186 trial referee deems material and shall thereupon revise such statement
187 of compensation in such manner as the judge trial referee deems
188 proper and forthwith report to the court. Such report shall contain a
189 detailed statement of findings by the judge trial referee, sufficient to
190 enable the court to determine the considerations upon which the judge
191 trial referee's conclusions are based. The report of the judge trial
192 referee shall take into account any evidence relevant to the fair market
193 value of the property, including evidence of environmental condition
194 and required environmental remediation. The judge trial referee shall
195 make a separate finding for remediation costs and the property owner
196 shall be entitled to a set-off of such costs in any pending or subsequent
197 action to recover remediation costs for the property. The court shall
198 review the report, and may reject it for any irregular or improper
199 conduct in the performance of the duties of the judge trial referee. If
200 the report is rejected, the court may appoint another judge trial referee
201 to make such review and report. If the report is accepted, its statement
202 of compensation shall be conclusive upon such owner and the
203 redevelopment agency.

204 (c) If the court does not appoint a judge trial referee, the court, after
205 giving at least ten days' notice to the parties interested of the time and
206 place of hearing, shall hear the applicant and the redevelopment
207 agency and take such testimony as it deems material, may view the
208 subject property, and shall make a finding regarding the statement of
209 compensation. The findings of the court shall take into account any
210 evidence relevant to the fair market value of the property, including

211 evidence of environmental condition and required environmental
212 remediation. The court shall make a separate finding for remediation
213 costs and the property owner shall be entitled to a set-off of such costs
214 in any pending or subsequent action to recover remediation costs for
215 the property. The findings of the court shall be conclusive upon such
216 owner and the redevelopment agency.

217 (d) If no appeal to the Appellate Court is filed within the time
218 allowed by law, or if an appeal is filed and the proceedings have
219 terminated in a final judgment finding the amount due the property
220 owner, the clerk shall send a certified copy of the statement of
221 compensation and of the judgment to the redevelopment agency,
222 which shall, upon receipt thereof, pay such property owner the
223 amount due as compensation. The pendency of any such application
224 for review shall not prevent or delay any action that is proposed with
225 regard to such property by the project area redevelopment plan.

226 Sec. 5. Section 8-268 of the 2006 supplement to the general statutes is
227 repealed and the following is substituted in lieu thereof (*Effective from*
228 *passage and applicable to property acquired on or after said date*):

229 (a) Whenever a program or project undertaken by a state agency or
230 under the supervision of a state agency will result in the displacement
231 of any person on or after July 6, 1971, the head of such state agency
232 shall make payment to any displaced person, upon proper application
233 as approved by such agency head, for (1) actual reasonable expenses in
234 moving [himself, his] such displaced person and such displaced
235 person's family [,] and business, farm operation or other personal
236 property, (2) actual direct losses of tangible personal property as a
237 result of moving or discontinuing a business or farm operation, but not
238 to exceed an amount equal to the reasonable expenses that would have
239 been required to relocate such property, as determined by the state
240 agency, and (3) actual reasonable expenses in searching for a
241 replacement business or farm. [, provided, whenever] Whenever any
242 tenant in any dwelling unit is displaced as the result of the

243 enforcement of any code to which this section is applicable by any
244 town, city or borough or agency thereof, the landlord of such dwelling
245 unit shall be liable for any payments made by such town, city or
246 borough pursuant to this section or by the state pursuant to subsection
247 (b) of section 8-280, and the town, city or borough or the state may
248 place a lien on any real property owned by such landlord to secure
249 repayment to the town, city or borough or the state of such payments,
250 which lien shall have the same priority as and shall be filed, enforced
251 and discharged in the same manner as a lien for municipal taxes under
252 chapter 205.

253 (b) Any displaced person eligible for payments under subsection (a)
254 of this section who is displaced from a dwelling and who elects to
255 accept the payments authorized by this subsection in lieu of the
256 payments authorized by subsection (a) of this section may receive a
257 moving expense allowance, determined according to a schedule
258 established by the state agency, not to exceed three hundred dollars
259 and a dislocation allowance of two hundred dollars.

260 (c) Any displaced person eligible for payments under subsection (a)
261 of this section who is displaced from his place of business or from his
262 farm operation and who elects to accept the payment authorized by
263 this subsection in lieu of the payment authorized by subsection (a) of
264 this section, may receive a fixed payment in an amount equal to the
265 average annual net earnings of the business or farm operation, except
266 that such payment shall not be less than two thousand five hundred
267 dollars nor more than [ten] twenty thousand dollars. In the case of a
268 business, no payment shall be made under this subsection unless the
269 state agency is satisfied that the business (1) cannot be relocated
270 without a substantial loss of its existing patronage, and (2) is not a part
271 of a commercial enterprise having at least one other establishment not
272 being acquired by the state, which is engaged in the same or similar
273 business. For purposes of this subsection, the term "average annual net
274 earnings" means one half of any net earnings of the business or farm
275 operation, before federal, state and local income taxes, during the two

276 taxable years immediately preceding the taxable year in which such
 277 business or farm operation moves from the real property acquired for
 278 such project, or during such other period as such agency determines to
 279 be more equitable for establishing such earnings, and includes any
 280 compensation paid by the business or farm operation to the owner,
 281 [his] the owner's spouse or [his] the owner's dependents during such
 282 period.

283 Sec. 6. Section 8-269 of the general statutes is repealed and the
 284 following is substituted in lieu thereof (*Effective from passage and*
 285 *applicable to property acquired on or after said date*):

286 (a) In addition to payments otherwise authorized by this chapter,
 287 the state agency shall make an additional payment not in excess of
 288 [fifteen thousand] twenty-two thousand five hundred dollars to any
 289 displaced person who is displaced from a dwelling actually owned
 290 and occupied by such displaced person for not less than one hundred
 291 [and] eighty days prior to the initiation of negotiations for the
 292 acquisition of the property. Such additional payment shall include the
 293 following elements: (1) The amount, if any, which when added to the
 294 acquisition cost of the dwelling acquired, equals the reasonable cost of
 295 a comparable replacement dwelling which is a decent, safe and
 296 sanitary dwelling adequate to accommodate such displaced person,
 297 reasonably accessible to public services and places of employment and
 298 available on the private market. All determinations required to carry
 299 out this [subparagraph] subdivision shall be made by the applicable
 300 regulations issued pursuant to section 8-273; (2) the amount, if any,
 301 which will compensate such displaced person for any increased
 302 interest cost which such person is required to pay for financing the
 303 acquisition of any such comparable replacement dwelling. Such
 304 amount shall be paid only if the dwelling acquired was encumbered by
 305 a bona fide mortgage which was a valid lien on such dwelling for not
 306 less than one hundred [and] eighty days prior to the initiation of
 307 negotiations for the acquisition of such dwelling. Such amount shall be
 308 equal to the excess in the aggregate interest and other debt service

309 costs of that amount of the principal of the mortgage on the
 310 replacement dwelling which is equal to the unpaid balance of the
 311 mortgage on the acquired dwelling, over the remainder term of the
 312 mortgage on the acquired dwelling, reduced to discounted present
 313 value. The discount rate shall be the prevailing interest rate on savings
 314 deposits by commercial banks in the general area in which the
 315 replacement dwelling is located; (3) reasonable expenses incurred by
 316 such displaced person for evidence of title, recording fees and other
 317 closing costs incident to the purchase of the replacement dwelling, but
 318 not including prepaid expenses.

319 (b) The additional payment authorized by this section shall be made
 320 only to such a displaced person who purchases and occupies a
 321 replacement dwelling which is decent, safe and sanitary not later than
 322 the end of the one year period beginning on the date on which [he]
 323 such displaced person receives final payment of all costs of the
 324 acquired dwelling, or on the date on which [he] such displaced person
 325 moves from the acquired dwelling, whichever is the later date.

326 Sec. 7. Section 8-270 of the general statutes is repealed and the
 327 following is substituted in lieu thereof (*Effective from passage and*
 328 *applicable to property acquired on or after said date*):

329 In addition to amounts otherwise authorized by this chapter, a state
 330 agency shall make a payment to or for any displaced person displaced
 331 from any dwelling not eligible to receive a payment under section 8-
 332 269, as amended by this act, which dwelling was actually and lawfully
 333 occupied by such displaced person for not less than ninety days prior
 334 to the initiation of negotiations for acquisition of such dwelling under
 335 the program or project which results in such person being displaced.
 336 Such payment shall be either (1) the amount necessary to enable such
 337 displaced person to lease or rent for a period not to exceed four years,
 338 a decent, safe, and sanitary dwelling of standards adequate to
 339 accommodate such person in areas not generally less desirable in
 340 regard to public utilities and public and commercial facilities, and

341 reasonably accessible to [his] such displaced person's place of
 342 employment, but not to exceed [four thousand] five thousand two
 343 hundred fifty dollars, or (2) the amount necessary to enable such
 344 displaced person to make a downpayment, including reasonable
 345 expenses incurred by such displaced person for evidence of title,
 346 recording fees, and other closing costs incident to the purchase of a
 347 decent, safe, and sanitary dwelling of standards adequate to
 348 accommodate such person in areas not generally less desirable in
 349 regard to public utilities and public and commercial facilities, but not
 350 to exceed [four thousand dollars, except that if such amount exceeds
 351 two thousand dollars, such person must equally match any such
 352 amount in excess of two thousand dollars in making the
 353 downpayment, and provided, whenever] five thousand two hundred
 354 fifty dollars. Whenever any tenant in any dwelling unit is displaced as
 355 the result of the enforcement of any code to which this section is
 356 applicable by any town, city or borough or agency thereof, the
 357 landlord of such dwelling unit shall be liable for any payments made
 358 by such town, city or borough pursuant to this section or by the state
 359 pursuant to subsection (b) of section 8-280, and the town, city or
 360 borough or the state may place a lien on any real property owned by
 361 such landlord to secure repayment to the town, city or borough or the
 362 state of such payments, which lien shall have the same priority as and
 363 shall be filed, enforced and discharged in the same manner as a lien for
 364 municipal taxes under chapter 205.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to property acquired on or after said date</i>	8-193
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage and applicable to property acquired on or after said date</i>	8-129

Sec. 4	<i>from passage</i>	8-132
Sec. 5	<i>from passage and applicable to property acquired on or after said date</i>	8-268
Sec. 6	<i>from passage and applicable to property acquired on or after said date</i>	8-269
Sec. 7	<i>from passage and applicable to property acquired on or after said date</i>	8-270

Statement of Purpose:

To (1) allow certain property owners to repurchase property taken from them by eminent domain if the land is not used for a public use and is subsequently resold, (2) prohibit persons from misrepresenting that they are authorized to acquire property by eminent domain by making such misrepresentation an unfair trade practice, (3) require appraisals in eminent domain proceedings to be conducted by state-licensed real estate appraisers in accordance with uniform standards, (4) require the consent of the parties before a court may appoint a judge trial referee to review a statement of compensation in an eminent domain proceeding, (5) increase the maximum payments for relocation assistance, and (6) revise the standards used by local legislative bodies prior to authorizing the use of eminent domain pursuant to a development plan under chapter 132 of the general statutes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]